N. 2939 No. 14779

United States
Court of Appeals
for the Ninth Circuit

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION No. 183, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Transcript of Record

Petition to Review and Set Aside an Order of the National Labor Relations Board

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. 12-2-55

No. 14779

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

MARCEL MALLET-PREVOST, ESQ.
Assistant General Counsel, National Labor Relations Board, Washington, D. C.,

For Petitioner, National Labor Relations Board.

BASSETT, GEISNESS & VANCE,
811 New World Life Bldg.,
Seattle 4, Washington,

For Respondents, Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183, Etc.

United States of America
National Labor Relations Board

Form NLRB-501

CHARGE AGAINST EMPLOYER

Do Not Write in This Space

Case No: 19-CA-1158.

Date Filed: August 9, 1954.

Compliance Status Checked By: N.M. 11-2-54.

Important—Read Carefully

Where a Charge Is Filed by a Labor Organization, or an Individual or Group Acting on Its Behalf, a Complaint Based Upon Such Charge Will Not Be Issued Unless the Charging Party and any National or International Labor Organization of Which It Is an Affiliate or Constituent Unit Have Complied With Section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an Original and 4 Copies of This Charge With the NLRB Regional Director for the Region in Which the Alleged Unfair Labor Practice Occurred or is Occurring.

1. Employer Against Whom Charge Is Brought:

Name of Employer: Alaska Beverage Co.
Address of Establishment: Fairbanks, Alaska.

No. of Workers Employed: Seven (7).
Nature of Employer's Business: Beverage Bottling & Coca-Cola Distributing.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a), Subsections (1) and 8 a (5) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

The Teamsters Union Local 183 had an Election in the Alaska Beverage Co. plant on May 26th, 1953, which was conducted by the National Labor Relations Board and was Certified as the bargaining representative for the Employees. Bargaining was started soon after this date between the Union Representative and Mr. H. W. Robinson, who is an owner of the plant. Since Mr. Robinson's residence is in the State of Connecticut it was very difficult for the Union to get Mr. Robinson to spend enough time in Alaska to Bargain. There was an elapse of time when there was little or no bargaining going on until about April, of 1954, at which time the bargaining was resumed. After we resumed the bargaining and had met with Mr. Robinson twice, the union was made an offer of a monthly scale by Mr. Robinson as a counter proposal to the hourly scale that the Union had asked for. This was turned down by the Union at first and later was accepted

by the Union. When the Union met with Mr. Robinson and told him that we would accept this monthly scale, he told the Union that he had changed his mind and would like an hourly scale which was below the hourly scale that the Union had asked in the first place. Since this time we (the Union) have not been able to bargain further with Mr. Robinson and the Employees went out on strike on the 28th day of June, 1954, in an effort to get Mr. Robinson to bargain further. This we believe was not bargaining in good faith on his part after we had given up the hourly scale and had accepted his proposal of a monthly scale. If there is any more information you need in relation to this case we will send it as soon as possible.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge:

   Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183, A. F. of L.

4. Address:

   P.O. Box 609 Fairbanks, Alaska, 315 Fifth Ave. Telephone No.: 5238.

5. Full Name of National or International Labor Organization of which it is an affiliate or constituent Unit (To be filled in when charge is filed by a labor organization).

   International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Affil. with the A. F. of L.

6. Address of National or International, if any:

100 Indiana Ave., N.W.
Washington 1, D.C.

7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ MICHAEL CSEREPES,
Business Representative Teamsters Union Local No. 183.

August 7, 1954.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

Received in evidence as General Counsel's Exhibit No. 1-A, November 22, 1954.

United States of America Before the National Labor Relations Board, Nineteenth Region

Case No. 19-CA-1158

HOMER W. ROBINSON d/b/a ALASKA BEVERAGE CO.

and

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 183, AFL

COMPLAINT

It having been charged by Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183,

AFL, Post Office Box 609, Fairbanks, Alaska, under date of August 9, 1954, that Homer W. Robinson d/b/a Alaska Beverage Co., Fairbanks, Alaska, hereinafter called Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the Labor Management Relations Act, 1947, as Amended , 61 Stat. 136, hereinafter called the Act, the General Counsel for the National Labor Relations Board, hereinafter called the Board, by the Regional Director for the Nineteenth Region of the Board, hereby alleges as follows:

I.

Homer W. Robinson, sole owner, hereinafter called Respondent, is and has been at all times material herein doing business under the trade name and style of Alaska Beverage Co. by virtue of the laws of the Territory of Alaska, having his principal office and place of business at Fairbanks, Alaska, and is now and has been at all times herein mentioned continuously engaged at said place of business, hereinafter called the Fairbanks Plant, in the manufacture, sale and distribution of carbonated beverages.

Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II.

A copy of the charge hereinabove referred to was served on Respondent by Registered Mail on August 10, 1954.

III.

Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183, AFL, hereinafter called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

IV.

In order to insure to the employees of Respondent the full benefit of the right to self organization and collective bargaining, and otherwise effectuate the policies of the Act, all employees of Respondent employed at its Fairbanks Plant, exclusive of supervisory employees, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

V.

On or about May 26, 1953, a majority of the employees of Respondent in the unit described above in paragraph IV, designated or selected the Union as their representative for purposes of collective bargaining with Respondent, and at all times since that date the Union has been the representative for purposes of collective bargaining of a majority of the employees in said unit, and by virtue of Section 9(a) of the Act has been and is now the exclusive representative of all the employees in said unit for purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

VI.

On or about April 23, 1954, May 12, 1954, May 18, 1954, and at various and sundry times since, the

Union requested Respondent to bargain collectively in respect to rates of pay, wages, hours of employment or other conditions of employment, with the Union as the exclusive representative of all the employees of Respondent in the unit described above in paragraph IV.

VII.

On or about April 23, 1954, and at all times thereafter, Respondent did refuse and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described above in paragraph IV.

VIII.

On or about June 28, 1954, the employees of Respondent employed at its Fairbanks Plant ceased work concertedly and went on strike.

IX.

The strike described above in paragraph VIII was caused by the unfair labor practice of Respondent described above in paragraph VII, and prolonged by the unfair labor practice described above in paragraph VII.

X.

By the acts described above in paragraph VII Respondent did engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8(a)(5) of the Act.

XI.

By the acts described above in paragraph VII and by each of said acts, Respondent did interfere

with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

XII.

The activities of Respondent described above in paaragraph VII, occurring in connection with the operations of Respondent described above in paragraph I, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIII.

The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board has caused this Complaint to be signed and issued by the Regional Director for the Nineteenth Region, on the 4th day of November, 1954, against Homer W. Robinson d/b/a Alaska Beverage Co., the Respondent herein.

/s/ THOMAS P. GRAHAM, JR.,
Regional Director.

Received in evidence as General Counsel's Exhibit No. 1-C, November 22, 1954.

Before the National Labor Relations Board

[Title of Cause.]

ANSWER

The Respondent, for answer to the complaint and charges herein, admits, denies and alleges as follows:

I.

Answering paragraph I of said complaint, the Respondent alleges that Alaska Beverage Co. is actually a co-partnership in which the Respondent is the sole active partner, and that he has full authority to represent and bind his undisclosed partner in all matters relating to the business affairs of Alaska Beverage Co.

Answering the second paragraph set forth in said Paragraph I, the Respondent admits that his company is engaged in commerce within the meaning of Section 2(6) of the Act, in that all activities of his company are limited to and located within the Territory of Alaska, but the Respondent expressly denies that his company is engaged in commerce within the meaning of Section 2(7) of said Act.

II.

The Respondent admits the allegations contained in paragraph II of the complaint herein.

III.

The Respondent admits the allegations contained in paragraph III of the complaint herein.

IV.

The Respondent admits the allegations contained in paragraph IV of the complaint herein.

V.

The Respondent admits the allegations contained in paragraph V of the complaint herein.

VI.

Answering paragraph VI of said complaint, the Respondent admits that on or about the specific dates alleged in said paragraph, the Union requested negotiations, and Respondent alleges that at all times on or about said dates he, in good faith, entered into negotiations with representatives of the Complainant. The Respondent expressly denies the allegation "and at various and sundry times since, the Union requested Respondent to bargain * * *"

In further answer to said general allegation, which is denied, the Respondent alleges that there have been to his knowledge no requests for negotiations, and that the Respondent has at all times been and now is willing to negotiate with the Complainant.

VII.

Respondent, answering the allegations of paragraph VII of the complaint herein, denies each and all of the allegations and the inferences to be drawn therefrom set forth in said paragraph.

VIII.

The Respondent admits the allegations contained in paragraph VIII of the complaint herein.

IX.

Respondent, answering the allegations of paragraph IX of the complaint herein, denies each and all of the allegations and the inferences to be drawn therefrom set forth in said paragraph.

X.

Respondent, answering the allegations of paragraph X of the complaint herein, denies each and all of the allegations and the inferences to be drawn therefrom set forth in said paragraph.

XI.

Respondent, answering the allegations of paragraph XI of the complaint herein, denies each and all of the allegations and the inferences to be drawn therefrom set forth in said paragraph.

XII.

Respondent, answering the allegations of paragraph XII of the complaint herein, denies each and all of the allegations and the inferences to be drawn therefrom set forth in said paragraph.

XIII.

Respondent, answering the allegations of paragraph XIII of the complaint herein, denies each and all of the allegations and the inferences to be drawn therefrom set forth in said paragraph.

Further answering the charges and complaint herein, the Respondent alleges:

I.

That at all times material hereto, Respondent has bargained and has been ready to bargain in good faith with representatives of the Union.

II.

That following the Union's certification as bargaining representative of Respondent's employees on or about May 26, 1953, Respondent never received a request from the Union for bargaining and negotiations relating to any contract until on or about April 18, 1954. That immediately upon receiving notification of the Union's desire to settle contract terms, Respondent notified the Fairbanks representative that he would be available for negotiations in Fairbanks on or about May 12, 1954. That the Respondent returned to Fairbanks on said day for the express purpose of meeting with representatives of the Union. That various and numerous discussions relating to contract terms, wages and working conditions were held. That prior to such negotiations, Respondent's employees had been on regular monthly salaries, and Respondent expressed a desire to continue such method of compensation if the employees approved thereof. That at first the Union objected thereto, and fearing that the certification which had been issued by this Board would expire, unless a contract were signed before May 26, 1954, threatened to strike, unless Respondent accepted the contract proposed by the Union.

That to bring pressure upon Respondent, the Union called Respondent's employees off the job in order to enforce the Union's demands that a contract be entered into immediately and before the one-year period following certification expired. That Respondent, by wire, thereupon waived any

objections that he might have, if any, by reason of the expiration of such period, and the Union then directed the employees to return to work.

That thereafter the Union expressed a desire, after having objected to the monthly pay plan, to accept the same. That having knowledge of such rejection, Respondent then proposed a wage and classification plan similar to that in effect in the Anchorage area. That the Union insisted upon a proposed monthly salary, and that on or about June 15, 1954, Respondent was notified that the membership had rejected a monthly salary plan and demanded an hourly rate of pay.

That Respondent then requested that final negotiations of the contract be postponed until the Anchorage contract had been signed, informing the Union that it was Respondent's desire to adopt the same wage rates and classifications applicable in the Anchorage area. That Respondent notified the Union that he would be back in Fairbanks on July 10th to complete negotiations.

That thereafter, and on or about the 26th day of June, 1954, the Union discontinued negotiations, ignoring Respondent's request for continuance of negotiations until about July 10th when the Anchorage area contracts would be signed, and ordered a strike of Respondent's plant.

Further answering the charges and complaint herein, Respondent charges and alleges:

I.

That the conduct of the Union in calling a strike of Respondent's employees constituted a refusal to

bargain, and the Union thereby committed an unfair labor practice in violation of Section 8 of the National Labor Relations Act.

II.

That the Union, by threats and economic pressure, interfered with the rights of the Respondent to continue his normal business activities through employees who were not covered or represented under the Union bargaining rights and thereby committed illegal acts in violation of Section 8(a)(1) of the National Labor Relations Act.

III.

That the Union committed and is continuing unfair labor practices in violation of Section 8(b)(4)(a) by using economic pressure and unlawfully forcing other employers and employees who were not involved in the controversy to refrain from handling or selling any of Respondent's products, all for the purpose of forcing the Respondent to sign a contract which had not been fully negotiated between the parties, and for the further purpose of forcing the Respondent to accede to certain demands which had not been approved by the Respondent.

That these unfair labor practices upon the part of the Union have continued and now are continuing, and, except as to wage rates, the Union has made no counter proposals or offers to negotiate other terms and conditions of the contract.

Wherefore, the Respondent, having fully answered the complaint and charges herein, prays

that such charges and the complaint herein be dismissed, and that the Union be ordered to cease and desist from the continuance of the unfair labor practices charged by the Respondent.

/s/ E. L. ARNELL.

Duly verified.

Received in evidence November 22, 1954.

Before the National Labor Relations Board

[Title of Cause.]

CHARLES Y. LATIMER, ESQ.,
For the General Counsel.

E. L. ARNELL, ESQ.,
For the Respondent.

JOE MORGAN,
ROBERT J. DIXON,
MIKE CSEREPES,
For the Union.

Before: Ralph Winkler, Trial Examiner.

Intermediate Report and Recommended Order
Statement of the Case

Upon a charge filed by the above-named labor organization, herein called the Union, the General Counsel of the National Labor Relations Board issued a complaint dated November 4, 1954, against Homer W. Robinson d/b/a Alaska Beverage Co.,

herein called the Respondent, alleging that the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 1947, 61 Stat. 136, herein called the Act. Copies of the complaint and the charge were duly served upon the Respondent, in response to which the Respondent filed an answer denying the unfair labor practices alleged.

Pursuant to notice, a hearing was held on November 22 and 23, 1954, at Fairbanks, Alaska, before the undersigned Trial Examiner. All parties were represented at the hearing and were given full opportunity to examine and cross-examine witnesses, and to introduce evidence bearing on the issues; they were also given opportunity for oral argument at the close of the hearing and to file briefs as well.

Respondent Robinson is engaged in the manufacture, sale, and distribution of carbonated beverages in Fairbanks, Alaska. During the past year the Respondent's purchases for this enterprise were valued at approximately $75,500, of which amount 95 per cent was obtained from outside the Territory; Respondent's sales during the same period amounted to approximately $226,000, all such sales being made within the Territory.

In June, 1953, following a Board-conducted election, the Union was certified as the statutory bargaining representative of Respondent's employees,

and the Respondent concedes that the Union has been the majority representative at all times since. The complaint alleges in substance that the Respondent has refused to bargain with the Union. Because, in my opinion, recent decisions of the Board require the dismissal of the present proceedings on grounds of jurisdictional policy, I shall not discuss the merits of the unfair labor practice issue presented by the complaint.

The Act, both in its original 1935 form and in the amended 1947 version, empowers the Board to prevent any person from engaging in unfair labor practices affecting "trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, *or within the District of Columbia or any Territory,*[1] or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country." (Italics added.) Congress has thus invoked its full plenary powers in making the Act applicable to all commerce "within" the Territories and the District

[1]To be compared, for example, with the Fair Labor Standards Act of 1938 which defines "commerce" for purposes of that Act as trade, commerce, etc., "among the several States" and which specifically provides that "State means any State of the United States or the District of Columbia or any Territory or possession of the United States." 29 U.S.C.A. Section 203.

of Columbia, and the statutory authority of the Board within the Territories and the District of Columbia is, therefore, equally comprehensive. See N.L.R.B. v. Gonzalez Padin Company, 161 F. 2d 353 (C. A. 1); Panaderia Sucesion Alonso, 87 NLRB 877, 878.

The Board has exercised its plenary jurisdiction in the Territories and the District of Columbia since the Act's inception in 1935; and, though the legislative debates attending the 1947 amendments were long and vigorous, there is nothing in the Amendments and pertinent Committee Reports[2] to indicate that Congress did not intend to preserve the jurisdictional distinction prescribed in the Act between the Territories and the District of Columbia on one hand and the States on the other or that Congress disapproved of the Board's exercise of plenary authority in the Territories and the District of Columbia.

This, then, was the legislative context in which the Union invoked the Board's processes and went to an election in the aforementioned Representation case in 1953, and the Union has instituted the present case to implement its status as a certified bargaining representative.

In November, 1954, however, the Board issued its decision in The Virgin Isles Hotel, Inc., 110 NLRB No. 65, a proceeding arising in St. Thomas

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[2]H. Rept. 510, 80th Cong., 1st Sess. (1947); S. Rept. 105, 80th Cong., 1st Sess. (1947); H. Rept. 245, 80th Cong., 1st Sess. (1947).

Island, Virgin Islands. The Board decided, with Member Murdock dissenting, that there was no warrant for excepting hotels in the Territories and the District of Columbia from the Board's policy of not entertaining cases involving such industry in the States. Noting that "the Act gives the Board plenary jurisdiction over all business enterprises operating in ["the District of Columbia or any Territory"] the Board's stated rationale was that "the relationship to commerce is no greater here than in the case of a hotel operating in any of the 48 States and we do not believe that the impact on commerce is sufficient in either instance to warrant the assertion of jurisdiction." Member Murdock stated in his dissent that this case constitutes "a major alteration in this agency's jurisdictional policy," his argument being that a determination not to exercise plenary jurisdiction within the Territories and thus to withhold protection of the Act is one "which properly should be made by Congress."

Shortly after the decision in the Virgin Isles Hotel case, the Board issued its decision in Sixto Ortega d/b/a Sixto, 110 NLRB No. 251 (December 16, 1954), a proceeding involving a retail selling establishment in Santurce, Puerto Rico. In this case the Board, with Member Murdock dissenting, held that it would apply the same jurisdictional tests to retail selling organizations in Puerto Rico as it does to similar establishments in the 48 States. "Moreover," said the majority, "in future cases

involving other types of business or operations for which the Board has established specially applicable standards for taking jurisdiction in the 48 States, we shall apply the same standards for asserting jurisdiction in Puerto Rico." Member Murdock's dissent protested the Board's refusal to exercise plenary jurisdiction in the premises.

Decided the same day as the Sixto case was Union Cab Company, 110 NLRB No. 259 (December 16, 1954), a proceeding involving several taxicab companies in Anchorage, Alaska. Citing another recent taxicab case[3] in which "the Board ruled that it would not assert jurisdiction over taxicab enterprises [in the 48 States]," a Board majority announced its decision "to adhere to that policy with respect to taxicab enterprises located in the Territories, despite the fact that the Act gives the Board plenary jurisdiction over all business enterprises operating in such places."[4] Member Murdock's dissent restated his position that "the Board is bound to exercise plenary jurisdiction with respect to labor relations in the Territories * * *"

Although one may conjecture regarding the

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[3]H. H. Williams, d/b/a Checker Cab Co., etc., 110 NLRB No. 109.

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[4]And also despite the fact that the Board has not entered into an agreement with any Agency of the Territory of Alaska in which the Board has ceded jurisdiction over any cases in any industry to such Territorial Agency, in accordance with Section 10 (a) of the Act. See S. Rept. 105, 80th Cong. 1st Sess., p. 26 (1947); H. Rept. 510, 80th Cong., 1st Sess., p. 52 (1947).

phrase, "specially applicable standards," appearing in the aforementioned Sixto case, I am unable to interpret the Sixto, Virgin Isles Hotel, and Union Cab cases other than as holding that the Board applies in all respects the same jurisdictional tests to the Territories as it does to the States. For the Board has jurisdiction over the all trade and commerce within the Territories and I do not perceive on what basis the Board would apply Tests A, B and C and not Tests D, E and F. I must conclude, therefore, in accordance with the aforementioned cases and Jonesboro Grain Drying Co-operative, 110 NLRB No. 67, that it would not effectuate the policies of the Act to assert jurisdiction in this matter and I shall accordingly recommend that the complaint herein be dismissed.

Order

It is recommended that the complaint in this matter be dismissed.

Dated at Washington, D. C., this 7th day of January, 1955.

/s/ RALPH WINKLER,
Trial Examiner.

Before the National Labor Relations Board

[Title of Cause.]

EXCEPTIONS

Counsel for the General Counsel excepts to the Intermediate Report of the Trial Examiner in the above-entitled matter in the following particulars:

Reference to Intermediate Report

1. Page 3, Lines 23-27—To the finding that the Board applies to territories, in all respects the same jurisdictional standards as apply to the states.

2. Page 3, Lines 30-33—To the conclusion that assertion of jurisdiction on the facts in the instant case would not effectuate the policies of the Act.

3. Page 3, line 37—To the recommendation to dismiss the complaint herein.

No page and line citations are available as this exception is deemed to spring from error in law.

4. To the failure to find that the direct importation by Respondent into the Territory of Alaska of $71,687.00 worth of supplies represents and constitutes a substantial, close and intimate relation to trade, traffic, transportation and commerce in the Territory of Alaska.

(Tr. page 6, line 23 to page 7, line 1.)

No page and line citations are available as this exception is deemed to spring from error in law.

5. To the failure to find that the gross annual volume of sales by Respondent in the Territory of

Alaska in the amount of $226,000.00 represents and constitutes a substantial, close and intimate relation to trade, traffic, transportation and commerce in the Territory of Alaska.

(Tr. page 7, lines 6-8.)

No page and line citations are available as this exception is deemed to spring from error in law.

6. To the failure to find that the gross annual volume of business conducted by Respondent in the Territory of Alaska when interrupted by a labor dispute has a pronounced effect and burden upon and obstruction to trade, traffic, transportation and commerce in Alaska.

(Tr. page 11, lines 6-17; page 33, line 11; page 34, line 6; page 86, lines 7-22; page 94, lines 10-14; page 114, lines 6-8; page 116, lines 11-14.)

No page and line citations are available as this exception is deemed to spring from error in law.

7. To the failure to find that the Act empowers the Board to exercise plenary jurisdiction over the business enterprise of Respondent.

Dated at Seattle, Washington, this 25th day of January, 1955.

/s/ PATRICK H. WALKER,
Counsel for the General
Counsel.

United States of America
Before the National Labor Relations Board

Case No. 19-CA-1158

HOMER W. ROBINSON, d/b/a ALASKA BEVERAGE CO.

and

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 183, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL

DECISION AND ORDER

On January 7, 1955, Trial Examiner Ralph Winkler issued his Intermediate Report in the above-entitled proceeding, finding that it would not effectuate the policies of the Act for the Board to assert jurisdiction in this case, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief; the Respondent filed a brief in support of the Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and

the record in the case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner with the following modification:

As stated in the Intermediate Report, the Respondent is engaged in the manufacture, sale and distribution of carbonated beverages in Fairbanks, Alaska. During the past year its purchases amounted to approximately $75,500, of which 95 per cent was obtained from outside the Territory: Respondent's sales during the same period amounted to approximately $226,000, all of which were made within the Territory.

Since the Intermediate Report was issued in this case, the Board's decision in Conrado Forestier, d/b/a Canteria Providencia, 111 NLRB No. 141, has been issued, in which the Board made clear that its jurisdictional standards would be uniformly applied in the Territories as in the several States. Accordingly, as the Respondent's operations fail to meet any of the Board jurisdictional standards,[1] we find, for the reasons stated in Canteria Providencia, that it would not effectuate the policies of the Act to assert jurisdiction in this case. We shall, therefore, dismiss the complaint in its entirety.[2]

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[1]Jonesboro Grain Drying Co-operative, 110 NLRB No. 67.

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[2]Member Murdock, in signing this decision, directs attention to the fact that he dissented from the adoption of this policy of applying U. S. standards to the Territories in place of the Board's former plenary policy, in the Canteria Providencia case.

Order

Upon the record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondent, Homer W. Robinson, d/b/a Alaska Beverage Co., Fairbanks, Alaska, be, and it hereby is, dismissed.

Dated: Washington D. C., March 17, 1955.

[Seal] GUY FARMER,
Chairman;

ABE MURDOCK,
IVAR H. PETERSON,
PHILIP RAY RODGERS,
Members, National Labor Relations Board.

United States of America
Before the National Labor Relations Board
Case No. 19-CA-1158

In the matter of:

HOMER W. ROBINSON, d/b/a ALASKA BEVERAGE CO.

and

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 183, AFL

TRANSCRIPT OF PROCEEDINGS

November 22, 1954—10:30 A.M.

The hearing of the above-entitled case was called for hearing at the call of the calendar and the following proceedings were had:

Before: Ralph Winkler, Trial Examiner.

Appearances:

CHARLES Y. LATIMER,
General Counsel.

E. L. ARNELL,
Attorney for Respondent.

MIKE CSEREPES,
ROBERT J. DIXON, and
JOE MORGAN,
For Local 183.

* * *

M. Latimer: I will ask the reporter to mark the formal papers for identification, as General Counsel's Exhibit No. 1-A, charge filed on August 9, 1954, against the Alaska Beverage Company; 1-B is Affidavit of Sevice of charge sworn to August 9, 1954, with registered postal receipts attached showing date of delivery as of August 10, 1954; 1-C, copy of Complaint dated November 4, 1954, signed by Thomas P. Graham, Jr., Regional Director, to which is attached copy of Notice of Hearing sworn to August 9, 1954; 1-D is Affidavit of Service of complaint and notice of hearing sworn to on the 4th day of November, 1954, to which is attached registered postal receipts showing dates of delivery

to the party; 1-E, copy of respondent's answer sworn to November 12, 1954. I have shown the exhibits to counsel and I offer them in evidence.

Trial Examiner: Objection?

Mr. Arnell: No objection.

Trial Examiner: Received.

(The documents above referred to were thereupon received in evidence as Exhibits 1-A through 1-E.) [4*]

Mr. Latimer: I would like to move at this time, Mr. Examiner, to delete from the Complaint paragraphs VIII and IX.

Trial Examiner: May I see the complaint, please. Oh, let me have Exhibit 1.

Mr. Latimer: You want an extra copy of it?

Trial Examiner: All right, sir. Proceed.

Mr. Latimer: Motion granted?

Trial Examiner: I haven't heard your motion.

Mr. Latimer: I moved to delete Paragraphs VII and IX from the complaint.

Trial Examiner: Granted. [5]

* * *

Mr. Latimer: The following stipulation is offered, Mr. Examiner.

(At this time, a discussion was held off the record.)

Mr. Latimer: During the past year respondent made puchases consisting principally of bottles and ground sugar and concentrates amounting to ap-

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

proximately $75,461, ninety-five per cent of which was shipped into the Territory [6] of Alaska from points outside the Territory. During the same period of time, all sales were made locally.

Trial Examiner: Do you have any figure on the sales?

Mr. Latimer: What are the sales?

Mr. Arnell: I thought you got those.

Mr. Latimer: Not the sales. During the same period of time sales amounted to approximately $226,000, all of which were made locally.

Trial Examiner: All right, the stipulation is good.

Mr. Latimer: I would like to call Mr. Scerepes.

MICHAEL CSEREPES,

a witness called on behalf of and by the General Counsel, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Latimer: [7]

* * *

Q. Do you have a copy of that?

A. Well, first I received a reply by telephone conversation.

Q. Oh. Tell us about that; when was that?

A. That was on the 26th, or not, the telephone conversation was on the 28th of April and Mr. Robinson called. At that time the boys were off work. We went on strike for a couple of days while we were waiting to hear whether he had come back to negotiate and we hadn't received any word so

(Testimony of Michael Cserepes.)

finally on the 28th it was the second day of our strike this phone conversation from Mr. Robinson in New York or Connecticut stating that he had received our telegram late and that he had been in another place and had been unable to receive the telegram but that he would try and get up to Fairbanks about the 15th of May, I believe he said at that time, and that we talked a lot about the fact that we had an election earlier in '53, and that the thing had dragged on for a long time and that we were afraid that we might have to go to another election. I thought so, and he said that he would grant an extension of time to us and he stated that he would send a telegram to confirm our conversation. [11]

* * *

Cross-Examination

By Mr. Arnell: [32]

* * *

Q. Was that before or after the strike that has been referred to? A. That was before.

Q. What did you do then following the second telephone conversation?

A. Well, following the second phone conversation the boys went out on strike, or we went on strike at the plant because——

Q. Was that before or after your wire of April 23rd which has been admitted in evidence as General Counsel's Exhibit No. 2?

A. That was after, because even though we

(Testimony of Michael Cserepes.)

sent the wire, said we would go out on the 26th, also thought that we would give him another day, if we at least received word he would be here at some particular date. That is all we wanted, just the fact that he would get here on the 26th so we would know.

Q. Not having heard from him by the 26th, the men walked out; is that correct?

A. No, the men walked out on the 27th, but decided we would [33] give him a chance to contact us again. I got ahold of Mr. Cohoe and asked if he had gotten ahold of him. Mr. Cohoe stated he heard from Mr. Robinson, said he had been here and he wouldn't say when. He said he wouldn't try to get ahold of him again, that we would have to wait until he got here. [34]

* * *

ROBERT J. DIXON,

a witness called on behalf of and by the Respondent, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Arnell: [80]

* * *

Q. Well, Mr. Dixon, after the men went out on strike, did you receive any communication from Mr. Robinson that he would be in town at any particular time?

A. After that one particular night that Mr. Cohoe placed a call through I have never talked to

(Testimony of Robert J. Dixon.)

Mr. Robinson from that time until he came in Fairbanks here today that I saw him this afternoon.

Q. Well, did you personally make any attempt to communicate with him by letter or otherwise?

A. None whatsoever due to the fact that I left the negotiations up to Mike who had originally started it, Mike Scerepes.

Q. Mr. Dixon, after the men went out on strike, what course did your Union pursue to make the strike effective?

A. Well, the pickets were on the, immediately put on the following Monday morning after the, I believe it was on the morning of the 28th. [86]

* * *

Cross-Examination

By Mr. Latimer:

Q. Mr. Ing is still handling Alaska Beverage products, is he not?

A. As far as I know he still is.

Q. When you would get these telephone calls from the owners of shops and liquor stores and cafes and things, what was the nature of the conversation?

A. Well, they asked is the strike still on at the Coca-Cola and I say yes, they is pickets up there on duty.

Q. Now, when you talked to Mr. Robinson on the telephone in the early part of June or the latter part of June rather, just before this strike was called, was there anything said to Mr. Robinson about trying to negotiate by mail?

(Testimony of Robert J. Dixon.)

A. He wanted me to write him a letter and state in a letter what we wanted and also wanted me to send him the contracts, one of the hourly scale and one of the monthly scale. [94]

* * *

H. W. ROBINSON,

the respondent, was called as a witness by and for himself, and having been previously sworn, was examined and testified further as follows:

Direct Examination

By Mr. Arnell: [97]

* * *

Q. Following your departure from Alaska on or about June 16th or 17th, what communications, if any, did you receive from Mr. Scerepes or anyone else representing the Union?

A. I received a telegram from Mr. Scerepes dated June 22nd, stating that the men were going to go on strike unless there was a contract signed prior to June 26th, on a monthly basis. I called Mr. Scerepes on the phone and told him that I had never received a contract on a monthly basis for consideration and didn't know how the Union would change Article 14, if a monthly basis were to be used, and he said that the men were worried about having their wages cut because the month's trial period was about to be over and suggested that I wire him agreeing to keep that monthly plan into effect until a contract was signed and I said I would agree to give them a month's notice before I

(Testimony of H. W. Robinson.)
would ever change the wage plan. And so sire him, which I did and also suggested that he send me the monthly contract he wanted me to sign. [114]

* * *

Q. What was the subject matter of your conversation then as you recall?

A. I believe the day I talked to Mr. Dixon the men were on strike and I begged Mr. Dixon to send me a contract, monthly basis that I could sign so that the men could go back to work. [116]

* * *

In the United States Court of Appeals
For the Ninth Circuit
No. 14779

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 183, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board by Its Executive Secretary, duly authorized by Section

102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "Homer W. Robinson d/b/a Alaska Beverage Co. and Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL," Case No. 19-CA-1158, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating Ralph Winkler Trial Examiner for the National Labor Relations Board, dated November 22, 1954.

2. Stenographic transcript of testimony taken before Trial Examiner Winkler on November 22, 1954, together with all exhibits introduced in evidence.

3. Copy of Trial Examiner Winkler's Intermediate Report and Recommended Order (annexed to item 5 hereof); and Order transferring case to the Board, both dated January 7, 1955, together with affidavit of service and United States Post Office return receipts thereof.

4. Copy of General Counsel's Exceptions to the Intermediate Report received January 27, 1955.

5. Copy of Decision and Order issued by the National Labor Relations Board on March 17, 1955, with Intermediate Report and Recommended Order annexed, together with Affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 28th day of June, 1955.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary, National
Labor Relations Board.

[Endorsed]: No. 14779. United States Court of Appeals for the Ninth Circuit. Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 183, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, Petitioner, vs. National Labor Relations Board, Respondent, Transcript of Record. Petition to Review and Set Aside an Order of the National Labor Relations Board.

Filed June 30, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 14779

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 183, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD

To the Honorable Judges of the United States Court of Appeals for the Ninth Circuit:

Teamsters, Chauffers, Warehousemen and Helpers, Local Union No. 183, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, pursuant to Section 10, Subdivision (f) of the National Labor Relations Act, as amended, 29 U. S. C. § 160 (f), respectfully petition this Court for review of the decision and order of the National Labor Relations Board, entered March 17, 1955, dismissing the complaint issued herein against Homer W. Robinson d/b/a Alaska Beverage Co. The proceedings resulting in

this order are known in the records of the National Labor Relations Board as Case No. 19-CA-1158.

In support of this petition Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183, respectively show:

1.) Homer W. Robinson, d/b/a Alaska Beverage Co., is engaged in business in the Territory of Alaska and Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization engaged in promoting and protecting the interest of its members in the Territory of Alaska, within this judicial circuit where the unfair labor practice occurred. This Court, therefore, has jurisdiction of this petition by virtue of Section 10 (f) of the National Labor Relations Act, as amended.

2.) In the proceedings in Case No. 19-CA-1158, a complaint dated November 4, 1954, was issued by the General Counsel against Homer W. Robinson, d/b/a Alaska Beverage Co., charging said Homer W. Robinson, d/b/a Alaska Beverage Co., with unfair labor practices. A hearing was held before a Trial Examiner of the National Labor Relations Board on November 22 and 23, 1954. On March 17, 1955, the National Labor Relations Board duly issued its decision and order dismissing the said complaint upon the ground that said Homer W. Robinson, d/b/a Alaska Beverage Co., did not do

a sufficient volume of business to meet the National Labor Relations Board self-imposed jurisdictional standards or tests. This decision and order of the National Labor Relations Board is based upon a misconception of law, because Homer W. Robinson, d/b/a Alaska Beverage Co., engaged and engages in commerce within the Territory of Alaska and the National Labor Relations Board ignored such commerce for the purpose of determining whether it should exercise jurisdiction, and considered only commerce between points within the Territory of Alaska and points outside the Territory of Alaska. It found commerce of the latter type insufficient to justify exercise of its jurisdiction under its own self-imposed standards, and altogether failed and refused to consider the commerce of Homer W. Robinson, d/b/a Alaska Beverage Co., within the Territory of Alaska in reaching its said decision as to jurisdiction, contrary to Section 2, Subsection 6, of the National Labor Relations Act, as amended.

Wherefore, Teamsters, Chauffeurs, Warehousemen and helpers, Local Union No. 183, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, prays this Honorable Court that it require the National Labor Relations Board to certify and deliver to this Court a transcript of the entire record in this proceeding, including the pleadings and testimony and exhibits upon which said decision and order of March 17, 1955, was entered and the findings and order of the Board, and that this Court take juris-

diction of this proceeding and enter a decree remanding this cause to the National Labor Relations Board and the Trial Examiner with instructions to determine the issues presented on the merits.

Respectively submitted,

/s/ SAMUEL B. BASSETT,

BASSETT, GEISNESS & VANCE,

Attorneys for Petitioner.

[Endorsed]: Filed May 28, 1955.

[Title of Court of Appeals and Cause.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO THE PETITION TO REVIEW AND SET ASIDE ITS ORDER DISMISSING COMPLAINT

To the Honorable, the Judges of the United States Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, Pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151 et seq.), hereinafter called the Act, files this answer to the petition to review and set aside an order of the Board dismissing the complaint of unfair labor practices issued against Homer W. Robinson, d/b/a Alaska Beverage Co., Pursuant to a charge filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 183, International Brotherhood of Team-

sters, Chauffeurs, Warehousemen and Helpers of America, AFL, petitioner herein.

1. Answering the allegations contained in paragraph 1 of the petition to review, the Board admits that this Court has jurisdiction under Section 10 (f) of the Act inasmuch as Homer W. Robinson, d/b/a Alaska Beverage Co., is engaged in business within this judicial circuit, that petitioner resides and transacts business within this judicial circuit, and that the unfair labor practices are alleged to have occurred within this judicial circuit. The Board, having dismissed the complaint on jurisdictional grounds, did not pass on the question whether any unfair labor practices occurred.

2. With respect to the allegations contained in paragraph 2 of the petition, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings before it, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter before the Board.

3. Further answering, the Board denies each and every allegation of error contained in paragraph 3 of the petition to review, and avers that the proceedings designated on the records of the Board as Case No. 19-CA-1158, entitled "Homer W. Robinson, d/b/a Alaska Beverage Co., and Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL," were and are in all respects valid and proper, and that there is no

ground for granting the requested relief by remanding the case to the Board and the Trial Examiner for a determination of the merits of the alleged unfair labor practices.

4. Pursuant to Section 10 (f) of the Act, the Board has certified and filed with the Court a transcript of the entire record in the proceedings before it.

Wherefore, the Board prays that the Court enter a decree denying the petition to review and set aside the order of the Board dismissing the complaint.

/s/ MARCEL MALLET-PREVOST,
Assistant General Counsel, National Labor Relations Board.

Dated at Washington D. C., this 28 day of June, 1955.

[Endorsed]: Filed June 30, 1955.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY

In this proceeding Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 183, International Brotherhood of Teamsters, Chauffeurs,Warehousemen and Helpers of America, AFL, will urge and rely upon the following points:

1.) Under Section 2, Subsection (6) of the National Labor Relations Act, as amended, the National Labor Relations Board was required to assert jurisdiction regardless of its own self-imposed jurisdictional standards or tests.

2.) In making its determination as to whether it should assert jurisdiction the National Labor relations Board was required, under Section 2, Subsection (6) of the National Labor Relations Act, as amended, to consider the effect upon commerce within the Territory of Alaska of unfair labor practices charged against the respondent employer, and its refusal to assert jurisdiction was based upon a misconception of law, because it refused to consider the effect of those practices upon such commerce.

/s/ SAMUEL B. BASSETT,

BASSETT, GEISNESS & VANCE.

Attorneys for Petitioner.

[Endorsed]: Filed July 13, 1955.